

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

ORIGINAL

In the matter of

Amendment of Section 1.420(f)
of the Commission's Rules
Concerning Automatic Stay of
Certain Allocation Orders

MM Docket No. 95-110

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To: The Commission

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REPLY COMMENTS OF KRTS, INC.

KRTS, Inc. ("KRTS"), licensee of KRTS(FM), Seabrook, Texas, by its attorneys and pursuant to Section 1.415 of the Commission's rules, hereby replies to comments filed concerning the Commission's Notice of Proposed Rulemaking, FCC 95-277 (released July 21, 1995), in the above-captioned docket (the "NPRM"). In the NPRM, the Commission proposes to eliminate the automatic stay triggered by the filing of a petition for reconsideration (or application for review) of any Commission order modifying an authorization to specify operation on a different channel. See 47 C.F.R. § 1.420(f) (1994).

In its initial comments to the NPRM, KRTS strongly supported the Commission's finding that the automatic stay impedes the provision of expanded service to the public. KRTS described how the Commission's order granting a channel upgrade for KRTS(FM) had been automatically stayed for three years, delaying improved service to its

listeners and ultimately causing it to suspend broadcast operations temporarily.^{1/} Several parties filed comments describing other situations where the automatic stay has severely impeded a licensee's ability to expand or maintain service.^{2/}

In each example, the mere *filing* of a petition for reconsideration or application for review, regardless of merit, was sufficient to block the licensee from carrying out a channel modification order. Thus, each case exemplifies the concern expressed by the Commission in the NPRM that the automatic stay encourages competitors to file petitions for reconsideration and applications for review, regardless of their merit, simply to impede enhanced competition.^{3/}

Only two parties filed comments opposing the elimination of the automatic stay.^{4/} These oppositions address only a very narrow subset of allotment upgrades: initial

^{1/} Comments of KRTS, Inc. at 3-4. On August 29, 1995, one day after KRTS filed its initial comments in this proceeding, the Commission finally denied the Application for Review underlying the automatic stay of the order granting KRTS' channel upgrade. See Seabrook, Texas, FCC 95-328 (released August 29, 1995). Thus, the harm visited upon KRTS and its listeners as a result of the three year automatic stay was unnecessary.

^{2/} See Comments of Carlos J. Colon Ventura at ¶¶ 4, 5 (automatic stay of channel modification order "is likely to cause the station [WSAN(FM), Vieques, Puerto Rico] to go dark" because its current special use permit will expire prior to the lifting of the automatic stay); Comments of Randolph Weigner (automatic stay has resulted in the loss of "at least a years (sic) worth of income"); Comments of Westview Communications (automatic stay is preventing WKKW(FM), Renovo, Pennsylvania from returning to operation).

^{3/} NPRM, 95-277, slip op. at ¶¶ 1, 6.

^{4/} See Comments of Roy E. Henderson ("Henderson") and Comments of Sampit Broadcasters ("Sampit").

staff decisions that order another station to modify its signal, contrary to its wishes, in order to accommodate the petitioner's channel modification. This issue is far too narrow to justify retention of the automatic stay rule.^{5/}

Henderson and Sampit argue that because an initial channel modification order requiring another station to change channels might be reversed on appeal, any such station that opposes changing its channel should be entitled to pursue an appeal to completion prior to being subject to the order. It is simply unnecessary to retain an automatic stay provision in order to address this concern. In the few cases where the initial channel modification is reversed, injury to the accommodating station might be averted by requiring the petitioner simply to pay the costs of switching the accommodating station back to its old channel.^{6/} Even if this measure is viewed as insufficient, any aggrieved party may nonetheless seek a stay upon a showing of "good cause," as is the case with respect to all other orders, decisions, and rulemakings by the Commission, or FCC staff acting under delegated authority.^{7/} In the case of a channel allotment change, such a stay should be available only where a licensee or permittee can demonstrate likely disruption to its listeners as a result of a

^{5/} Indeed, Henderson expressly supports the elimination of the automatic stay where "only the petitioner's own existing channel would be changed." Henderson Comments at 5.

^{6/} Accord, Comments of the FCBA at ¶ 6.

^{7/} See 47 C.F.R. §§ 1.102(b)(2) and (3), 1.106(n) and 1.429(k) (1994).

channel change, coupled with a significant likelihood that it will succeed on the merits of its appeal.^{8/}

CONCLUSION

Accordingly, the Commission should expeditiously act on its proposal and repeal the automatic stay rule. By amending its Rules, the Commission will substantially reduce the incentive to file meritless petitions and will eliminate unnecessary obstacles to the expansion of service that benefits the public and improves a station's economic viability.

Respectfully submitted,

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^{8/} Such a standard would mirror two of the factors necessary to secure a judicial stay of an agency order. See, e.g., Washington Metro. Area Transit Comm'n. v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977).

CERTIFICATE OF SERVICE

I, Cristina M. Lirag, hereby certify that a true copy of the foregoing "Reply
Comments of KRTS, Inc." was mailed, postage prepaid this 12th day of September, 1995 to:

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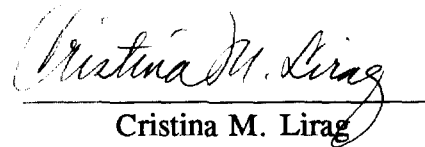
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